

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7044

Petition of City of Burlington, d/b/a Burlington)
Telecom, for a certificate of public good to)
operate a cable television system in the City of)
Burlington, Vermont (In Re: Amended Petition)
to amend Condition No. 17 of CPG related to)
completion of system build-out and to grant)
temporary relief from limitation in Condition)
No. 60 of CPG on financing operations))

Order entered: May 6, 2010

ORDER RE: SCHEDULE

By memorandum dated April 2, 2010, the Clerk of the Board requested the parties to advise the Board as to their joint or individual recommendations for a revised schedule in this proceeding given that the deadlines set forth in the scheduling order of November 24, 2009, were not being met. Each of the parties filed responses to this request.

By letter dated April 23, 2010, the Vermont Department of Public Service ("Department") represents that its discovery is proceeding, that it expects to depose at least one witness, and that its consultant's investigation proceeds apace. Meanwhile, it suggests the following litigation schedule:

May 14, 2010 Motions for Summary Judgment to be filed

June 14, 2010 Responses to Motions for Summary Judgment

The Department's letter does not state who is expected to file a Motion for Summary Judgment; one assumes that the Department expects to file such a motion, but clearly other parties may also file. If more than one party does file, then all responses will be due on June 14. Following rulings on any motions for summary judgment, the Department anticipates that the parties will file proposed schedules for the remainder of the current proceeding, or request a status conference.

Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast, filed a letter on April 26 supporting the Department's recommended schedule.

The City of Burlington, d/b/a Burlington Telecom ("BT"), filed a letter on April 23 in response to the Department's recommendations, supporting the Department's proposed schedule but suggesting that further discovery be put on hold until after a ruling on the motion(s). BT points out that only after that ruling will the parties know what issues remain to be litigated and, therefore, what issues may require more discovery. This argument has some superficial merit, but I think it must fail. The Department, as noted above, is in the midst of a consultant's investigation, which surely must qualify as "discovery," and the Department plans on scheduling at least one deposition before that investigation is complete. I think it more likely that continuation of discovery will reveal areas where no facts are in dispute than to cause unneeded delay and expense, and I reject BT's suggestion.¹

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of May, 2010.

s/ John P. Bentley
John P. Bentley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: May 6, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

1. This ought not be read as ruling on an actual motion by BT in the event any party files a discovery request that is objectionable under the Board's discovery rules.